

## Message Text

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ORIGIN L-03

INFO OCT-01 AF-10 NEA-10 ISO-00 SP-02 USIA-06 AID-05  
EB-08 NSC-05 TRSE-00 SS-15 STR-04 OMB-01 CEA-01  
CIAE-00 COME-00 FRB-03 INR-07 NSAE-00 XMB-02  
OPIC-03 LAB-04 SIL-01 H-01 PRS-01 DHA-02 SIG-01  
EUR-12 IO-13 DODE-00 AGRE-00 ITC-01 /122 R

DRAFTED BY L/NEA:DSMALL:NEA/RA:DTMORRISON:SLB  
APPROVED BY NEA:SSOBER  
NEA/ARN:DREUTHER  
NEA/RA:RCHEEK  
EB:AWATSON  
USDOC/GD:KKNOWLES (INFO)  
UDSOC/CAGNE:JHEALN (INFO)  
H:PSTAHNKE

-----162351Z 113188 /61

R 162310Z APR 77  
FM SECSTATE WASHDC  
TO AMEMBASSY ABU DHABI  
AMEMBASSY AMMAN  
USINT BAGHDAD  
AMEMBASSY BEIRUT  
AMEMBASSY CAIRO  
AMEMBASSY DAMASCUS  
AMEMBASSY DOHA  
AMEMBASSY JIDDA  
AMEMBASSY KUWAIT  
AMEMBASSY MANAMA  
AMEMBASSY MUSCAT  
AMEMBASSY SANA  
AMEMBASSY TRIPOLI  
INFO AMCONSUL ALEXANDRIA  
AMEMBASSY ALGIERS  
AMCONSUL DHAHRAN  
AMEMBASSY KHARTOUM  
AMEMBASSY MOGADISCIO  
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AMEMBASSY NOUAKCHOTT  
AMEMBASSY RABAT  
AMEMBASSY TEL AVIV  
AMEMBASSY TUNIS  
ALL OECD CAPITALS

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E.O. 11652: N/A

TAGS: ETRD, PFOR

SUBJECT: FURTHER STATUS REPORT ON U.S. ANTI-BOYCOTT  
LEGISLATION

REF: (A) STATE 61234 (B) STATE 80062 (NOTAL)

1. HOUSE INTERNATIONAL RELATIONS COMMITTEE COMPLETED MARK UP OF ANTI-BOYCOTT PROVISIONS OF H.R. 1561 (NOW RENUMBERED H.R. 5840) ON MARCH 31; SENATE BANKING COMMITTEE COMPLETED MARK UP OF ANTI-BOYCOTT PROVISIONS OF S. 69 ON APRIL 5. HOUSE INTERNATIONAL RELATIONS COMMITTEE REPORT ISSUED ON MARCH 7 AND SENATE BANKING COMMITTEE REPORT EXPECTED ON APRIL 18. FLOOR ACTION ON H.R. 5840 IS SCHEDULED FOR APRIL 20. TIMING OF SENATE ACTION IS LESS CERTAIN WITH POSSIBILITY OF CARRYOVER INTO MAY IF FLOOR FIGHT IN PROSPECT OVER VARIOUS AMENDMENTS ADOPTED BY COMMITTEE.

2. IN COURSE OF RESPECTIVE MARK UP SESSIONS, HIRC AND SENATE BANKING COMMITTEE ADOPTED NUMBER OF ADMINISTRATION RECOMMENDATIONS FOR AMENDMENT EITHER IN PART OR IN WHOLE. NUMEROUS DIFFERENCES BETWEEN LANGUAGE OF RESPECTIVE BILLS WILL REMAIN, HOWEVER, TO BE WORKED OUT IN CONFERENCE. GIVEN IMPRECISION OF SOME PROHIBITIONS AND EXCEPTIONS IN THEIR PRESENT FORM, COMMITTEE AND CONFERENCE REPORTS MAY  
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BE OF PARTICULAR IMPORTANCE IN DETERMINING CONGRESSIONAL INTENT AS TO SUBSEQUENT WRITING OF REGULATIONS UNDER THE LAW.

3. FOLLOWING ASPECTS OF BILLS AS MARKED UP ARE OF PARTICULAR INTEREST:

(A) COMPLIANCE WITH UNILATERAL SELECTION: HOUSE VERSION PERMITS U.S. FIRMS TO COMPLY WITH DESIGNATION BY BOYCOTTING STATE CUSTOMER (INCLUDING FOREIGN RESIDENTS) OF ANY PARTICIPANT (E.G., SUBCONTRACTOR OR SUPPLIER OF COMPONENTS) IN A TRANSACTION, EXCEPT RPT EXCEPT IN CASES IN WHICH U.S. FIRM "HAS ACTUAL KNOWLEDGE THAT THE SOLE PURPOSE OF THE DESIGNATION IS TO IMPLEMENT THE BOYCOTT." SENATE VERSION DOES NOT HAVE SUCH KNOWLEDGE TEST. HOWEVER, IT LIMITS COMPLIANCE TO SELECTION OF INSURERS, CARRIERS, SERVICES TO BE PROVIDED IN THE BOYCOTTING STATE, AND GOODS IDENTIFIABLE BY SOURCE UPON IMPORT INTO

THE BOYCOTTING STATE (E.G., BUYER FOR BOYCOTT REASON COULD SELECT BRAND OF TIRES ON TRACTOR BUT NOT BRAND OF PISTON RING INSTALLED IN MOTOR). FURTHER, UNLIKE THE HOUSE, SENATE VERSION EXCLUDES RPT EXCLUDES U.S. FIRMS FROM THE CATEGORY OF BOYCOTTING STATE RESIDENTS WHOSE SELECTIONS OTHER U.S. FIRMS MAY COMPLY WITH.

(B) COMPLIANCE WITH FOREIGN LAW: SENATE VERSION PERMITS COMPLIANCE BY A U.S. RESIDENT FIRM WITH THE HOST COUNTRY LAW, INCLUDING IMPORT LAW, FOR HIS ACTIVITIES EXCLUSIVELY IN THE BOYCOTTING COUNTRY. THE IMPORT LAW EXCEPTION IS NOT MANDATED BUT MAY BE ALLOWED BY REGULATION. COMMITTEE REPORT IS EXPECTED TO INDICATE THAT SUCH DISCRETION IS INTENDED TO FACILITATE IMPORTS FOR OWN USE BY U.S. RESIDENT OPERATING FIRM--NOT FOR SIMPLE RESALE. THE HOUSE VERSION PERMITS COMPLIANCE WITH LOCAL FOREIGN LAW FOR ACTIVITIES WITHIN THE FOREIGN COUNTRY, BUT WOULD LIMITED OFFICIAL USE

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REQUIRE SPECIFIC EXECUTIVE WAIVER FOR EACH PROVISION OF FOREIGN LAW IN QUESTION. FURTHER, THE HOUSE PROVISION MIGHT BE INTERPRETED TO PREVENT A COMPANY NOW DOING ITS MIDDLE EAST PROCUREMENT IN THE U.S. FROM SHIFTING PROCUREMENT TO ITS MIDDLE EAST OPERATION, AN INTERPRETATION WHICH COULD LIMIT THE EXCEPTION.

(C) REFUSAL-TO-DEAL PROVISION: THE HOUSE VERSION PROHIBITS "REFRAINING" FROM DOING BUSINESS (WITH BOYCOTTED COUNTRY OR WITH OTHER PERSONS) WHILE THE SENATE USES THE MORE ACTIVE CONCEPT OF "REFUSING" TO DO BUSINESS. NEITHER VERSION REQUIRES THAT VIOLATIONS BE BASED ON FINDING OF AGREEMENT.

(D) EXTRATERRITORIALITY: THE HOUSE VERSION EXTENDS EXTRATERRITORIALLY TO ACTIVITIES OF FOREIGN SUBSIDIARIES AND AFFILIATES OF U.S. FIRMS WHICH "AFFECT" THE FOREIGN COMMERCE OF THE U.S., WHILE THE SENATE VERSION ONLY REACHES CONDUCT OF THOSE FIRMS "IN" THE INTERSTATE OR FOREIGN COMMERCE OF THE U.S.

(E) COVERAGE OF INDIVIDUALS: THE HOUSE VERSION REACHES ALL U.S. PERSONS WHILE THE SENATE VERSION DOES NOT REACH U.S. INDIVIDUAL PERSONS ABROAD EMPLOYED BY FOREIGN COMPANIES.

(F) GRANDFATHER CLAUSE: THE HOUSE VERSION PROVIDES A MAXIMUM OF TWO AND ONE HALF YEARS "GRANDFATHERING" FOR EXISTING CONTRACTS (THOSE CONTRACTS IN EFFECT ON MARCH 1 OR APRIL 1, 1977) WHILE THE SENATE ALLOWS A MAXIMUM OF FIVE YEARS.

(G) ENTRY INTO FORCE: THE SENATE VERSION GIVES 210 DAYS FROM ENACTMENT FOR ENTRY INTO FORCE OF FINAL REGULATIONS, WHILE HOUSE PROVIDES 120 DAYS.

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(H) REPORTING REQUIREMENTS: THE HOUSE VERSION REQUIRES REPORTING ONLY OF REQUESTS FOR PROHIBITED ACTION, WHILE THE SENATE VERSION REQUIRES REPORTING OF ALL BOYCOTT REQUESTS.

(I) DISCLOSURE OF REPORTS: THE HOUSE ALLOWS IDENTITY OF REPORTING FIRM TO BE WITHHELD IN CERTAIN CIRCUMSTANCES, WHILE THE SENATE VERSION DOES NOT.

(J) PRE-EMPTION: BOTH BILLS WOULD PREEMPT STATE ANTI-BOYCOTT LAWS.

(K) NEGATIVE CERTIFICATES OF ORIGIN: BOTH BILLS WOULD, AFTER A GRACE PERIOD, PROHIBIT NEGATIVE CERTIFICATES. THE HOUSE GRACE PERIOD IS FOR ONE YEAR FROM THE DATE OF THE REGULATIONS, AS AGAINST ONE YEAR FROM THE DATE OF ENACTMENT OF THE LAW IN THE SENATE VERSION.

(L) INFORMATION SUPPLY: BOTH BILLS CONTAIN BROAD PROHIBITION AGAINST SUPPLY OF BOYCOTT-TYPE INFORMATION, ALTHOUGH UNDER BOTH SENATE BILL AND HOUSE REPORT SUPPLY OF NORMAL COMMERCIAL INFORMATION IN COMMERCIAL CONTEXT IS ALLOWED.

(M) DISCRIMINATION: BOTH BILLS HAVE BROAD PROHIBITION AGAINST HIRING OR OTHER DISCRIMINATION BASED ON RACE, RELIGION, SEX, OR NATIONAL ORIGIN AS RESULT OF BOYCOTT

PRACTICES.

(N) LETTERS OF CREDIT: BOTH BILLS PROHIBIT PAYING OR PROCESSING LETTERS OF CREDIT CONTAINING PROHIBITED BOYCOTT CONDITIONS.

(O) IMMIGRATION/PASSPORT REQUIREMENTS: SENATE BILL AND HOUSE REPORT PROVIDE THAT INDIVIDUALS MAY COMPLY WITH LIMITED OFFICIAL USE

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FOREIGN COUNTRY IMMIGRATION AND PASSPORT (VISA?) REQUIRE-

MENTS NOTWITHSTANDING OTHER PROVISIONS OF THE ACT.

4. ABOVE INFO YOUR BACKGROUND USE IN YOUR CONTINUING  
DISCUSSIONS WITH BOYCOTTING COUNTRY OFFICIALS (AS ON  
ANTICIPATED PROHIBITIONS WHICH WILL CALL FOR PRAGMATIC  
ACCOMMODATIONS BY BOYCOTTING STATES--PER STATE 80062.)  
DEPARTMENT WILL PROVIDE FURTHER INFO AND GUIDANCE AS  
LEGISLATION PROCESS CONTINUES.  
CHRISTOPHER

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NNN

## Message Attributes

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**Decaption Note:**  
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**Disposition Approved on Date:**  
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**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 22 May 2009  
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**Type:** TE  
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**Review Markings:**  
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